

**MANDATE**S.D.N.Y.-N.Y.C.  
08-cv-0304  
Wood, C. J.**United States Court of Appeals**FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16<sup>th</sup> day of June, two thousand eight,

Present:

Hon. Sonia Sotomayor,  
Hon. Richard C. Wesley,  
Hon. J. Clifford Wallace,\*  
Circuit Judges.

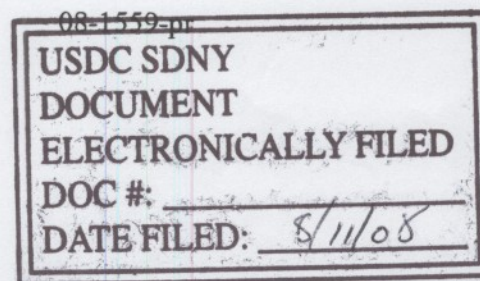


Ralph Almeyda,

*Petitioner-Appellant,*

v.

James Nicholas, Superintendent of Mid-Orange  
Correctional Facility, *et al.*,

*Respondents-Appellees.*

Appellant, *pro se*, moves to withdraw his appeal, and for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion to withdraw the appeal is DENIED. See *United States v. Outen*, 286 F.3d 622, 632 n. 5 (2d Cir. 2002) (finding that “[a] notice of appeal filed and dismissed voluntarily is gone, no more effective in conferring jurisdiction on a court than a notice never filed”). It is further ORDERED that the motion to proceed *in forma pauperis* is construed as also requesting a certificate of appealability. This motion is DENIED and the appeal is DISMISSED because Appellant has not made a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c); *Miller v. Cockrell*, 537 U.S. 322 (2003), and has not shown that “(1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the Rule 60(b) motion, states a valid claim of the denial of a constitutional right,” *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (*per curiam*).

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk

by Jammy Martinez  
DEPUTY CLERK

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: Franklin

\*The Honorable J. Clifford Wallace, of the United States Court of Appeals for the 9<sup>th</sup> Circuit,  
sitting by designation.

ISSUED AS MANDATE: 8/7/08